



**DRAFT OPEN SESSION MINUTES  
OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
BOARD OF DIRECTORS**

**December 1, 2023  
Hybrid meeting in Tigard, Oregon**

Board Chair Steve Hill called the open session meeting of the Board of Directors to order pursuant to ORS 192.660 (2)(f) and (h) at 9:12 a.m. Present in addition to Mr. Hill were board members Gina Anne Johnnie (via Teams), Valerie Saiki, Chris Karlin, Michelle Johansson, Ali Hilsher, and Harshi Waters. 2024 PLF new board members John Bachofner and Mark Johnson Roberts attended open session. In addition, Lee Ann Donaldson (OSB President), Ankur Doshi (OSB General Counsel), and Cole Bixenman (RVK representative, via Teams) attended all or some of open session. Also present were PLF staff members Megan Livermore, Betty Lou Morrow, Matt Borrillo, Heather Bowman, Emilee Preble, Tanya Hanson, Kyra Hazilla, Cindy Hill, Holli Houston, Kalia Walker, Brad Tompkins, Sarah Troutt, Maureen DeFrank (via Teams), Pam Stendahl, Wendy Margolis, John Berge, Rachel Edwards, Monica Logan, Ann Ledgerwood, Sharnel Mesirow and Jason Ouellette.

This meeting was noticed and conducted in compliance with the Oregon Public Meetings Law, ORS 192.610, et seq. and a quorum was verified.

Mr. Hill announced that Cindy Hill is retiring after 35 years. He then introduced the 2024 PLF new board members, John Bachofner and Mark Johnson Roberts.

**1. RVK Report (Mr. Bixenman)**

**(A) Q32023 RVK Capital Markets Review and October/November 2023 Updates**

Cole Bixenman of RVK gave the following report.

- Performance has been slightly positive in 2023 through Q3 but was broadly negative in the third quarter alone. There has been a significant rally in November.
- ROI year to date at September 30 was 3.45% net of fees.
- There is an expectation the Federal Reserve may start to cut interest rates in 2024 which would cause fixed income prices to increase.
- RVK will work with Betty Lou to review the current asset allocation in 2024 to ensure the allocation matches the PLF's stated goals for the portfolio.

According to Mr. Bixenman and the November 30, 2023, statement, the annual rate of return was 1.7% bringing us to 7.7% (we were at 3.5% then dropped to 1.7%).

**2. Chair Report (Mr. Hill)**

**Approval of Open Session Minutes**

- (A)i. 2023-10-13 Draft Open Session Minutes (BOD)

*Valerie Saiki moved, and Michelle Johansson seconded that the October 13, 2023, Open Session Minutes be approved as written. Motion passed unanimously 7-0 (2 vacancies).*

**Approval of Executive Session Minutes in Open Session**

- (A)ii. 2023-10-13 Executive Session Minutes (BOD/Claims)  
(A)iii. 2023-11-09 Executive Session Minutes (Standing BOD Meeting to discuss claims)

*Ms. Johnnie moved, and Mr. Karlin seconded that the October 13, 2023, and November 09, 2023, executive session minutes be approved as written. Motion passed unanimously 7-0 (2 vacancies).*

**(B) Committee Minutes**

- i. 2023-08-07 Finance and Investments Committee Minutes

There was no discussion and no action required.

**3. Claims Report – Open Session (Mr. Borrillo)**

**(A) General Claims Report**

Mr. Borrillo reported that things are going smoothly in claims. We are predicting that we will end the year with roughly 632 claims. Prior to the pandemic, the numbers were 850 to 900 claims annually. Evaluations continue to be positive. The claims attorneys and claims assistants do a fantastic job. We deal with people in crisis and other issues, but they maintain their professionalism.

The defense panel is evolving with people retiring. The claims team continues to work on recruiting new firms and working with current firms on succession planning for our work.

The 2024 Defense Panel Conference will be held in Bend, Oregon, August 22-24.

Mr. Borrillo reported that the Claims Committee met just prior to today's meeting and the discussion involved Artificial Intelligence (AI) and the need to understand the standard of care and how that might change as more attorneys adopt AI technologies. Also discussed were the new LPs that will become Covered Parties when they are licensed and potential challenges posed by their limited scope of work.

The conversation turned to LP licensing matters and solicited a report from Mr. Doshi. He reported that the Oregon State Bar has 9 applications so far and the first licensing exam will be in December. The exam will include 38 questions on rule 11 (scope of practice). The second half of the exam includes another 30 or so questions on professional conduct. There will be different exams for family law applicants and landlord/tenant applicants which, if passed, will result in a specific endorsement to the LP's license. The scope of practice for the LPs will be defined by which endorsement they have – family law or landlord/tenant. Currently, all applications are family law applicants. It is a shorter exam and, as a result, could be a faster rotation than the regular bar exam.

#### **4. Financial Reports (Ms. Morrow)**

Ms. Morrow reported that Jason Ouellette, our database administrator and ISI project manager, will periodically attend board meetings to give updates on the project.

Mr. Ouellette reported that a team has been assembled with 12 staff members from claims, accounting, and excess program. We are currently in the phase of answering questions from ISI and collecting documents they can use to begin customizing the software for the PLF. They will be on site February 6-8 to meet with our team.

Ms. Livermore said the expectation for roll-out is currently projected to be 18 months. This could extend to 24 months (end of 2025).

#### **(A) 2023-October 31 Financial Statements**

Cole Bixenman from RVK and Ms. Morrow gave the financial report. There are no adjustments from the auditors. She noted that there is an error in the materials (assessments were overstated by \$1 million).

Balance Sheet. There is a \$10 million difference between this year and last due to an offset on accrued lease liability, which is a new accounting requirement. We are further ahead on assessment revenue vs. YTD. Ms. Morrow said we now have a few more than 7,000 covered parties. This is an indication that lower numbers are bottoming out. Typically, in January we see a surge of payment. We are seeing more payments in December this year.

Asset Allocation. About 4 to 5 years ago, we worked with RVK to do some modeling to identify financial goals of the PLF because that asset allocation will define what we expect our return to be. We have held onto that asset allocation, with minimum deviations, for a number of years. The ten-year average rate of return is around 7%. This is not bad for a quasi-government organization. We want to have a sustainable portfolio (enough in reserve funded by the portfolio to pay claims and have an ample net position to weather difficult financial years). Ms. Morrow will work with the Finance & Investments Committee to review our current allocation and will bring any suggested adjustments to the board.

Claims. We budgeted 720 claims but expect to land much lower than that (see Claims report, above). Although the numbers have come down, frequency and severity look like they might be creeping up a bit. Having lower frequency and severity has helped us, though, with the new trend the average cost of new claims could go up by about \$500. Large settlements are picking up again.

The estimate of in-year surplus is around a \$500,000 loss. We budgeted for a \$2 million loss so this is much better than expected. It could change before the end of the year, depending on how our investments do.

We are only off by \$140,000 for return on investment.

Ms. Donaldson asked for an explanation of the difference of cash on the balance sheet. Ms. Morrow explained that the time of year makes a difference and payments of excess claims. This is relatively normal with our balance sheets.

**5. Practice Management Assistance Program (PMAP) (Ms. Logan)**

**(A) PMAP Report: May 2023 through November 2023**

Ms. Logan gave the PMAP report. She referred the Board to the charts in the materials and said that the new custom software allows for better tracking of contacts, usage statistics, etc.

From May through November, there were 325 interactions, mostly on office systems topics. Most interactions are by phone (66%); most are in the Portland metro area. A road show is planned for next year outside of Portland to make contact with a broader segment of legal professionals, particularly those in rural areas.

Learning The Ropes. 129 new lawyers registered for the conference; 119 attended. This year, they tried a new way to streamline questions from the audience via texting anonymously. It was very successful and they expect to do this again. Ms. Logan thanked all who attended and spoke at the lunches.

CLE/Presentations. 20 different CLEs/presentations were provided to various organizations and firms. See materials for specific information. The most sought-after topic was disaster planning.

Resource Access. There were 2,000 views of CLEs online, mostly practice management.

Licensed Paralegals. The OSB has asked the PMAP's assistance in developing CLE and educational resources for licensed paralegals (LPs). They will be recording 2 different CLEs for this purpose later in December.

Generative AI. Ms. Dao and Mr. Doshi presented a CLE on the ethical and malpractice considerations for lawyers using generative AI in their practice. In addition, Ms. Dao wrote an article on ChatGPT, with Part I published in the August issue and Part II scheduled for the December issue of our *inBrief* newsletter.

Next week, the PMAs will hold their annual programmatic planning meeting.

**6. Oregon Attorney Assistance Program (OAAP) (Ms. Hazilla)**

**(A) OAAP Update**

Ms. Hazilla reported that everything is running smoothly at the OAAP. See materials for specific information.

Law Schools. The attorney counselors made in person appearances at all three Oregon law schools this fall. This was the first time since the pandemic.

Group Meetings/Events. In-person group meetings have returned as have other annual events. The recent retreat for women and those who identify as non-binary was very well received.

*inSight*. The last edition of *inSight* is in progress and is expected to be published before the end of December. This publication continues to drive requests for assistance from the OAAP, more so than other avenues of communication.

Year-end statistics will be provided at the February meeting. Qualitatively, people's needs are more intense. We are seeing people accessing who are having higher intensity of traumatic experiences; victims of violent crimes; scary experiences. The OAAP will train on critical incident response.

2024 Planning. A programmatic planning meeting for 2024 is scheduled for January.

**7. Excess Program (Ms. Preble)**

**(A) Excess Program Update**

Ms. Preble reported that excess renewals are on track with last year (last year at this time we had 309 applications; this year we have 311). Ms. Hughes is fully up to speed now and the pace of quotes and payments is quicker this year. For firms who want to ensure they get a quote to bind coverage starting January 1, 2024, their deadline for submitting an application is December 8.

**(B) Administrative Update**

Ms. Preble announced that Cindy Hill and Nancy Brown are retiring. Ms. Brown has been with the PLF for 18 years and Ms. Hill has been with the PLF for 35 years. It is a big loss to lose both Cindy and Nancy. We are actively working to find a new Executive Assistant to fill Cindy's role. A current staff member, Ted Cave, will be taking over Nancy's role.

We are working on tenant improvements to the OAAP space from some landlord money we got when renewing our lease last year. More updates will be reported later.

**8. Communications Program (Ms. Hanson)**

**(A) Communications Department Update**

*inBrief*. Ms. Hanson reported that Ms. Dao's part II of her ChatGPT article will appear in the December *inBrief*, along with our bi-annual legislative alerts, which is drafted in collaboration with the OSB. It includes short summaries of legislative changes. There is also a message from the CFO regarding the assessment returning to \$3,500, explaining the rationale for that decision and including illustrative charts.

*inSight*. The winter issue is themed around social connection. There is an epidemic of social loneliness.

Website. We are working on getting the website fully updated for incoming LPs, modifying language, and including a page just for LPs. Mr. Bachofner inquired whether non-LPs will also have access to this information on the website (for example, a law firm considering hiring an LP). Ms. Hanson said they will.

Annual Report. We will begin working on the annual report soon and expect it to be complete by next spring.

Publications. Ms. Edwards reported that the Comms and LMAP teams are working on a big overhaul of the PLF handbooks (Gold, Green, Purple, etc.). They are working with a graphic design team to give it a more professional look. We expect it to be done shortly.

## **9. CEO Report (Ms. Livermore)**

### **(A) CEO Update**

Ms. Livermore reported that she attended the BOG retreat in Cannon Beach in November and met the new BOG members. David Rosen has been elected as BOG president for 2024 and Myah Kehoe was elected as president-elect. We are looking forward to continuing our collaboration with the OSB and the BOG on matters affecting Oregon's legal community. This includes work on rural practice initiatives, access to justice and legal professional well-being. She especially appreciates the Bar/BOG's ongoing support of well-being efforts.

Ms. Livermore also reported that at the December BOG meeting, the Board Development Committee and the full BOG approved our new board members for 2024 – Gina Johnnie, Mark Johnson Roberts and John Bachofner.

### **(A) 2024 Election of Officers (2024)**

Ms. Livermore reminded the Board that Oren Haker resigned as a board member in October due to a conflict of interest. Ms. Bowman then discussed the process for removing board member Oren Haker and adding Steve Hill as Chair. There are several steps that need to take place, as follows:

1. The BOD needs to vote to officially remove Oren Haker from the BOD, pursuant to Article 3.3(C);
2. The next step will be a motion to permit additional nominations for the Chair position. Per the bylaws (Article 4.5), the vice chair is the chair-designate and any other candidates are only allowed by board motion;
3. If step 2 passes, a board member can nominate Steve Hill to be the 2024 Chair; and
4. If Steve Hill is nominated as Chair, the Board can then vote on that, pursuant to Article 4.2.

Mr. Bachofner questioned why we have to vote to remove someone if they resigned. Ms. Bowman stated that this is a requirement in our Bylaws. We may need to change this in the future.

1. *Valerie Saiki moved and Chris Karlin seconded the removal of Oren Haker from the PLF Board of Directors. The motion passed 7-0 (2 vacancies).*
2. *Michelle Johansson moved and Valerie Saiki seconded that the Board permit additional nominations for the 2024 Chair. Motion passed 7-0 (2 vacancies).*
3. *Chris Karlin moved and Harshi Waters seconded that the Board nominate Steve Hill as Chair for 2024 and approve the election of Steve Hill as Chair for 2024. Motion passed 6-0 (2 vacancies; 1 abstention [Steve Hill]).*

The board then proceeded to vote on the remaining officer slate - 2024 Vice-Chair/Chair-Designate, Michelle Johansson and Secretary-Treasurer, Chris Karlin.

*Ali Hilsher moved and Valerie Saiki seconded that Michelle Johansson be elected as 2024 Vice-Chair and Chair-Designate. Motion passed 6-0 (2 vacancies; 1 abstention [Michelle]).*

*Steve Hill moved and Harshi Waters seconded that Chris Karlin be elected as 2024 Secretary-Treasurer. Motion passed 6-0 (2 vacancies; 1 abstention [Chris Karlin]).*

### **(C) 2024 Committee Preferences**

Ms. Livermore referred the Board to the committee preferences memo in the materials and asked that they be returned to Cindy Hill by December 15.

Ms. Hilsher noted that she was chair of the Excess Program Committee this year, but the committee did not meet. Ms. Johansson said this was the same for the Coverage Committee. Ms. Livermore said that these committees are fairly dormant until there is a need to meet, but asked the board to please let her know if they want to have regular meetings. Mr. Hill mentioned that if there is a need for a committee to meet, they will get a heads up from Ms. Livermore.

### **(D) 2024 Public Board Member Discussion**

Ms. Livermore informed the board that we have two potential public board member candidates – one is a former PLF board member and the other is a Portland-based tech exec. She is also continuing to do outreach to other potential public members – either to fill the current vacancy or to pipeline for future public member vacancies. The board should expect to vote on the new public member in February. We will then present the names to the BOG for their approval at their February meeting.

## **10. Liaisons' Report (BOG)**

### **(A) BOG Update**

Ms. Donaldson gave the BOG report. She said it is nice to attend in person.

Since the last update Ms. Donaldson and Ms. Hirschbiel did a local bar tour around the state from November 6 through 9, 2023. They traveled to Eugene, Roseburg, Medford, Ashland, Grants Pass, Gold Beach, Coquille, Coos Bay, Newport, Tillamook, and McMinnville. It is difficult to get attorneys in rural counties, especially indigent defense and prosecution. They had ideas about other models that may help fill some gaps, including one out of the New Mexico court system that Curry/Coos counties are interested in pursuing. The Bar will partner with law schools to see about setting up this type of program.

The BOG meeting and retreat was held in Cannon Beach. The focus was on mindfulness. Rolph Gates led 2 half-day sessions on mediation.

As previously mentioned, David Rosen (Bend) was elected as the next president (2024). Myah Kehoe (Portland) was elected as president-elect (2024).

Ms. Donaldson is on the Licensure Pathway Development Committee (LPDC). The Supreme Court approved the postgraduate supervised practice pathway and they need to get supervising attorneys. These have to be paid positions.

Mr. Doshi said they are working with getting things set up for LPs and he thanked all PLF staff who have helped them, especially the PMAs for all of their assistance. They are hopeful to have everything out in two to three weeks.

Since the HOD meeting, there have been changes to the Rules of Professional Conduct. The BOG also approved some changes to the LP rules, so the amendments mirror each other. Rules 1.2(d), 1.8(e), and 8.4(a)7.

LRAP (Loan Repayment Assistance Program). Another way the BOG is trying to assist rural practitioners is through the OSB LRAP Committee. This committee approved changes to extend the repayment assistance program. They still have to meet an income threshold but the expanded rules might help capture some new practitioners. There is a small pot of money; they did not want to expand too much. It has been implemented in rural areas, but it will be monitored to see if areas need to be expanded.

Ms. Morrow asked what the funding source is for this program. Mr. Doshi said it is a \$15 annual fee added to the assessment. Ms. Donaldson said the Public Affairs Committee could look into legislative funding. It will not happen next year, but could potentially happen in the future.

Ms. Donaldson said it was a wonderful and challenging year as OSB President.

Ms. Johansson said that Ms. Donaldson has done a great job and she appreciates her service.

### **11. Unfinished and New Business**

There was no unfinished or new business to discuss.

### **12. Executive Session**

Mr. Hill concluded the open session meeting and said they would move into executive session, pursuant to ORS 192.660(2)(f) and (h) to discuss claim matters and other executive session issues. See separate executive session minutes.

### **13. Adjournment**

The meeting was adjourned at 11:45 a.m.